

In the Matter of

Power Country, Inc.

Licensee of AM Radio Station WGRO,
Lake City, Florida

File Number EB-02-TP-618

NAL/Acct.No.200332700022

FRN 0001-8101-75

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 1, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Power Country, Inc., licensee of AM radio station WGRO, Lake City, Florida, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.49 of the Commission’s Rules (“Rules”).¹ Specifically, we find Power Country, Inc. apparently liable for failure to maintain an effective locked fence around the base of its AM antenna tower.

II. BACKGROUND

2. On November 22, 2002, two agents from the Commission's Tampa Field Office inspected Power Country, Inc.'s AM antenna tower for station WGRO(AM) in Lake City, Florida. The agents found the station's AM antenna tower was not enclosed within an effective locked fence. A lock was attached to the fence post but there was no hinge attached to the gate thus rendering the lock ineffective. The station manager stated that a new fence had been ordered some time ago but had not yet been delivered. The tower had radio frequency potential at its base.

III. DISCUSSION

3. Section 73.49 of the Rules requires antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences. On November 22, 2002, the WGRO AM antenna tower was not enclosed within an effective locked fence, allowing unrestricted access to the base of the structure.

¹ 47 C.F.R. § 73.49.

4. Based on the evidence before us, we find that Power Country, Inc., willfully² violated Section 73.49 of the Rules by failing to maintain an effective locked fence around the base of its AM antenna tower.

5. Pursuant to Section 1.80(b)(4) of the Rules,³ the base forfeiture amount for failing to maintain effective locked AM tower fencing is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.”⁴ Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Power Country, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.49 of the Rules by failing to maintain an effective locked fence around the base of its AM antenna tower used at station WGRO.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability, Power Country, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ 47 U.S.C. § 503 (b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁷ See 47 C.F.R. § 1.1914.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this Notice of Apparent Liability shall be sent by regular mail and Certified Mail Return Receipt Requested to Power Country, Inc., RT 13, Box 318, Lake City, Florida.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director, Tampa Office
Enforcement Bureau